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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th January 1953

S.R.O. 39.—WHEREAS the election of Shri Narbada Charan Lal, as a member of the Legislative Assembly of the State of Bhopal from the Amravad Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Bejaysingh, son of Shri Harchand, Village Sankhera, Post Office Bhar Katch, Teshil Bareli, Bhopal;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BHOPAL

FOR

ELECTION PETITION No. 133 OF 1952 (CASE No. 2 OF 1952)

PRESENT:

Shri N. V. Sathaye, *Chairman.*

Shri W. Y. Radke, and Shri M. C. Nihalani } *Members.*

Bejaysingh . . ... *Petitioner.*

Vs.

1. Narbada Charan Lal,
2. Shyamlal,
3. Beharilal, &
4. Randhir Singh } *Respondents.*

Shri Punjwani,, Shri Jaiswal and Shri Senpar for the Petitioner.

Shri B. L. Seth and Shri R. C. Rai for the Respondent No. 1.

None for the Respondents Nos. 2 to 4.

ORDER

(*Passed on the 3rd January* 1953)

1. On the 20th January, 1952 Shri Narbada Charanlal pleader of Bareli, the respondent No. 1 before us was declared elected to the seat of a member to Bhopal Legislative Assembly from Amravad Constituency. This result of election was, further as required by section 67 of the Representation of People Act, 1951, published in the Bhopal Gazette dated the 9th February, 1952.

2. Candidates for this seat were five in number. One was the petitioner and the rest four were the respondents before us.

3. Unfortunately for the petitioner his aspirations came to an abrupt end as none of his three nomination papers was accepted on scrutiny held, on December 8th, 1951, by the Returning Officer, Bareli Shri S. M. Afzal who rejected all the nomination papers of the petitioner by his order of the even date. A similar misfortune befell the nomination papers of the respondent Nos. 3 and 4. The petitioner and respondents Nos. 3 and 4 being thus eliminated there remained only respondents Nos. 1 and 2 to contest the finals and as stated above, ultimately it was the respondent No. 1 who emerged victorious.

4. The respondents Nos. 2 to 4 seemed to have felt no further interest. This will be apparent from their making no appearance before us although they were duly served. But the petitioner obviously remained dissatisfied. Hence his election petition under section 81 of the Representation of People Act, 1951, calling in question the election of respondent No. 1.

5. The facts of this petition material for our consideration lie within a short compass. Before we indicate the points still in controversy before us we must record the change that the petition had to undergo at the stage of the trial before us as a result of the amendment.

6. The petition, as it originally stood, laid claim to the following two reliefs: (1) that the election of the returned candidate is void and that he himself (the petitioner) may be declared duly elected or (2) that the election may be declared wholly void. The case of the petitioner with regard to the first relief was pleaded in paras 10, 11, 12, 14, 15 and 16 of the petition. The rest of the paras pertained to the second relief.

7. Now under section 84 of the Representation of People Act, which deals with the reliefs claimable by a petitioner, it was not permissible for the petitioner to claim more than one relief out of the three reliefs enumerated therein. Section 84 of the Representation of People Act reads as under:—

> "Relief that may be claimed by the petitioner. A petitioner may claim any one of the following declarations:
>
> (a) that the election of the returned candidate is void;
>
> (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
>
> (c) that the election is wholly void."

8. This being the position we had to intervene in the interests of a fair trial to prevent taking the pleas which the petitioner could not legally take. We, therefore, called upon the petitioner to elect between the two reliefs claimed by him and retain only one. The petitioner chose the relief falling under clause (c) of section 84 *ibid viz.*, that the election may be declared wholly void.

9. The other relief being omitted, paras Nos. 10, 11, 12, 14, 15 and 16 of the petition, which related thereto, became redundant The petitioner, therefore, moved an application dated 14th October 1952 for amendment of his petition by deleting the relief under section 84, clause (b) of the Act and also the paras. appropriate thereto. This application was granted by our order of the same date.

10. The case of the petitioner, as remained after the amendment, omitting the details for the moment, could be put thus: that the result of the election has been materially affected firstly by the wrongful rejection of the petitioner's nomination papers and secondly by the wrongful acceptance of the respondent No. 1 and 2's nomination papers and as such the election should be declared to be wholly void.

11. The statement of the petitioner's case, as regards the rejection of his nomination-papers, is found in paras 2 to 8 of his petition. The grounds on which the nomination-papers of respondents Nos. 1 and 2 should have been rejected are

dealt with in paras. 9 and 13 of the petition respectively. Out of this the portion of the petitioner's case in regard to the wrongful acceptance of the nomination-papers of respondents 1 and 2 was not seriously pressed before us at the time of arguments.

12. The learned counsel for the petitioner frankly admitted that out of the grounds, enumerated in para. No. 9 of the petition, for the rejection of the nomination-papers of respondent No. 1, Nos. 2 and 6 were taken out of a mistake. The rest were, by his own account, trivial and were taken only because the grounds taken by the respondent No. 1 for the rejection of the petitioner's nomination-papers were also trivial. With this statement from the bar, we do not think, we should take any serious note of this aspect of the petitioner's case.

13. Regarding the improper acceptance of the nomination-papers of respondent No. 2, it was conceded that it would not be any ground for holding the election void as wrongful acceptance of his nomination-papers adversely affected the respondent No. 1 rather than the petitioner.

14. The pivotal point in the petitioner's case then becomes the wrongful rejection of his nomination-papers. Regarding this again, at the time of arguments, reliance was solely placed upon the nomination-paper serial No. 4. In this connection it has to be observed that the facts are hardly in dispute and the dispute is largely a matter of interpretation of certain provisions of the Representation of People Act. The two grounds, on which the petitioner's nomination-papers were rejected by the Returning Officer, were that: (1) that he was an assessor and as such he held an office of profit and (2) that the column relating to the appointment of election agent' was not properly filled in as much as the petitioner failed to specify the name as required by the form. The petitioner does not dispute the fact of being an assess or the fact of omission to specify the name in the column of election agent. What is denied by him is the legal effect given to these objections by the Returning Officer. The above, in brief, is the substance of the petitioner's case.

15. The respondent No. 1's case is equally simple. His case is that the nomination-papers of the petitioner were rightly rejected by the Returning Officer; that there are no grounds to hold that the nomination-papers of respondent No. 1 were wrongfully accepted. He further contends that the nomination-papers of respondent No. 2 were rightly accepted and in any case that does not make any difference. He has, in paras. 23 and 24 of the written-statement, stated further grounds for the rejection of the petitioner's nomination-papers. It is suggested that the petitioner was also a Patel of mouza Sankheda, Tahsil Bareli, District Raisen and that that is an office of profit and therefore he was disqualified. As regards the nomination-paper, serial No. 6 of the petitioner, it is contended by the respondent that it was not presented by a person authorised under the law to present the same and therefore it could not be taken into consideration. One Randhirsingh, who presented this nomination-paper, was neither a proposer nor a seconder. The respondent challenged the validity of the deposit of Rs. 1,000 to be made by the petitioner in accordance with the provisions of section 117 of the Representation of People Act. The respondent further pleaded that the petition was prematurely filed and that the reliefs claimed were not in accordance with the provisions of the law and therefore the petition was not maintainable. Further the respondent Nos. 3 and 4 were not duly nominated members and therefore their joinder in the petition made it not maintainable on account of the misjoinder of parties.

16. On these contentions following issues were framed and our findings are shown in juxtaposition:—

Issues	*Findings*
(1) Whether a deposit of Rs. 1,000/- has been made by the petitioner in favour of Secretary to the Election Commission as required by section 117 of the R. P. Act? If not with what effect ?	Yes. It is in accordance with section 117 of the R. P. Act.
(2) Whether the petition is not maintainable on account of misjoinder of respondents 3 and 4 who were not duly nominated members ?	It is maintainable.
(3) Whether the nomination paper of the petitioner bearing Serial No. V was proposed and seconded by the two voters who proposed and seconded nomination-paper No. IV of the petitioner ? If so, with what result ?	Yes. Nomination paper S No. V is invalid.

Issues	Findings
(4) Is the order dated 8th December 1951 of the Returning Officer, rejecting the petitioner's three nomination-papers, contrary to the provisions of section 36(6) of the R. P. Act, 1951 ?	No. Reasons for rejection need not be on the nomination paper.
(5) (*a*) Whether there was any foot-note in the nomination-papers Nos. IV and VI of the petitioner and the petitioner had substantially complied with the provisions of the said foot-note by writing "myself" instead of his name in the column relating to name of the election agent ?	Yes. There was a foot-note ; there was no substantial compliance as name of the agent not stated as required by the foot-note.
(*b*) whether the said defect if any, was a technical one and not a substantial one and as such was covered by section 36, sub-section (4) of the R. P. Act, 1951 ?	No, it was substantial. No.
(6) Whether there was any foot-note in the nomination-papers of the petitioner asterisked after note 6 requiring specification of name in the column relating to 'election agent' and non-compliance therewith was fatal to the validity of nomination-papers ?	Yes. Yes.
(7) Whether the only nomination papers of the petitioner that could be considered by the Returning Officer was nomination-paper No. IV and not others *vide* section 36(7) and 33(1) of the R. P. Act, 1951 ?	All papers could be considered.
(8) Whether the petitioner being an assessor did not hold any office of profit ? If so, with what effect on his nomination papers ?	An assessor does not hold office of profit. Does not arise.
(9) Whether the nomination-paper of respondent No. 1 was liable to be rejected on all or any of the grounds enumerated in para. 9 of the petition ?	No.
(10) Did the petitioner raise the objections shown in para. 9 of the petition to the nomination papers of the respondent No. 1 ? If not, is he estopped from raising them by the petition ? And are they beyond the scope of the petition ?	No.
(11) Whether the nomination-papers of respondent No. 2 had defects shown in para. 13 of the petition ?	Does not arise.
(12) Whether the nomination-papers of the petitioner are further liable to be rejected on the grounds enumerated in paras. 23 and 24 of the written statement of the respondent No. 1 ?	No. Finding *vide* findings on Issue Nos. 3 to 8.
(13) Whether the order of the Returning Officer rejecting the nomination-papers Nos. IV and VI of the petitioner, is perverse, illegal, without jurisdiction and malicious ? If so, with what effect ?	No. Does not arise.
(14) Whether the rejection of the petitioner's nomination papers and acceptance of the nomination papers of the respondents 1 and 2, materially affected the result of the election ?	Does not arise.
(15) Is the petitioner entitled to the declaration that the election is wholly void ?	No.
(16) (*a*) Is the petition not maintainable on account of the defects of originally claiming two reliefs instead of one as permitted by law ?	No. It is tenable.
(*b*) Is the petition still liable to be dismissed inspite of th amendment by dropping one relief ?	No.
Additional Issue	
(17) Is the petition of the petitioner premature ? If so, is it liable to be dismissed on that account ?	No. Does not arise.

REASONS FOR THE FINDINGS

17. *Issue No.* 1.—This issue relates to the deposit being made by the petitioner under the provisions of section 117 of the Representation of People Act. The petitioner, under section 117, is required to deposit Rs. 1,000 in favour of the Secretary, Election Commission, India, as security for the costs of the petition and he is further required to enclose with the petition a Government Treasury Receipt showing that a deposit of Rs. 1,000 has been made by him either in Government Treasury or in the Reserve Bank of India. The respondent contends that the deposit was not validly made. At the outset the learned counsel for the petitioner denied our power to go into the question whether the deposit was validly made as required by section 117 *ibid*, once the Election Commission accepted it to have been validly made. This contention was amazing in face of Section 90, sub-section 4 of the Act. Section 90, sub-section (4) provides as under:—

> "Notwithstanding anything contained under section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117."

When the attention of the learned counsel for the petitioner was drawn to this provision, he frankly admitted that this provision had escaped his notice, and that he did not press his objection further.

18. Under this issue we have to consider two things, *viz.* whether the deposit of a sum of Rs. 1,000 was actually made and whether it was validly made. In this connection we have before us the evidence of the petitioner (P.W. 1) and the Treasury Officer (P.W. 4). The petitioner has also produced the treasury-challan (Ex. P-12) and Treasury Officer's certificate (Ex. P-6). These documents leave no doubt in our mind that a sum of Rs. 1,000 was deposited in the name of the Secretary, Election Commission in connection with the election petition filed by the petitioner. As regards the validity of it, it was argued by the learned counsel for the respondent that this deposit was invalid in as much as the treasury-challan (Ex. P-12) did not show that this amount was deposited as a security for the costs of the petition. We do not think there is any substance in this contention. There has been a sufficient compliance with the provisions of section 117 of the Representation of People Act by showing that the deposit was being made in connection with the election petition filed by the petitioner. This being the only deposit required to be made by the petitioner in connection with election petition, it must necessarily be construed to have been made as security for the costs of the petition, particularly when the petitioner has specified in the treasury-challan that he is making this deposit in connection with his election petition. We have, therefore, no hesitation to hold that the deposit made by the petitioner was in accordance with the provisions of section 117 of the Representation of People Act.

19. *Issue No.* 2.—This issue was not pressed before us and speaking for ourselves we see no ground to hold that the petition is not maintainable merely because respondents Nos. 3 and 4, who have been joined, should not have been joined not being duly nominated candidates as contemplated by section 82 of the Representation of People Act. We, therefore, hold that the petition is maintainable despite this defect.

20. *Issues Nos.* 3 *to* 8 *and* 12.—All these issues relate to the nomination-papers of the petitioner and embrace all manner of conceivable grounds touching the validity or otherwise of the said-papers. These issues were, for the sake of convenience, argued together at the bar and we ourselves feel it convenient to deal with them in that manner.

21. There is little dispute about the facts underlying these issues. It is an admitted fact that the petitioner filed three nomination papers being serial Nos. 4 5 and 6. They are Ex. P-7, P-8 and P-9 respectively. It is also common ground that the petitioner is an assessor. Whether that works as a disqualification in law is the only point thrown in issue. The petitioner is alleged to be a member of the Central Tractor Organization, but no attempt has been made to prove that allegation. Therefore the only point in dispute is whether the nomination-papers of the petitioner should have been rejected.

22. Some oral evidence have been adduced. From the side of the petitioner, he has examined himself (P.W. 1), the Returning Officer, Shri S. M. Afzal (P.W. 2) and the Sessions Judge, Shri S. A. Karim (P.W. 3). On the side of the respondent, he himself alone has gone into the witness-box. We do not think anything much turns on this oral evidence. The documents produced by the parties speak for themselves and to our mind their construction and the interpretation of the relevant provisions of the Representation of People Act alone would decide the fate of the parties.

23. Before we scan the arguments advanced at the bar we might state the reasons that prevailed with the Returning Officer in rejecting the nomination papers of the petitioner. He found two defects common to all the three nomination papers. One was that none of the nomination papers filed by the petitioner specified the name of the election agent as required by the prescribed form and the second was that the petitioner was an assessor of the Sessions Court, Bhopal and as such he held an office of profit and was thus disqualified. In addition to these two grounds, the Returning Officer held that serial No. 5 was not acceptable as it had been proposed and seconded by the same persons who had proposed and seconded the nomination paper serial No. 4.

24. We think the case is very simple. We take the case of each nomination-paper separately, as we are bound to do under the Act. We will take nomination paper, serial No. 6 first. Apart from the infirmities common to all the nomination papers, this paper has a defect peculiar to it which should be a sufficient ground for its rejection. Admittedly this paper was presented by one Randhirsingh. This Randhirsingh was neither a proposer nor a seconder, as required by the law, to enable him to present the nomination-paper. Section 33, sub-section (1) of the Representation of People Act makes it abundantly clear that the presentation of a nomination-paper should be made either by the candidate himself in person or by his proposer or seconder. This paper not having been presented in accordance with the provisions of section 33, sub-section (1) *ibid* is invalid and was liable to be rejected. We, therefore, hold that this paper was rightly rejected by the Returning Officer on this ground alone.

25. We now come to the nomination-paper No. 5. This paper was proposed and seconded by Randhirsingh and Ramcharan respectively. These were the persons also who proposed and seconded respectively nomination paper, serial No. 4, also having proposed and seconded nomination paper No. 4 they were debarred, under section 36, sub-section 7, clause (b) of the Representation of People Act, from subscribing as proposer and seconder to the nomination paper, serial No. 5, as admittedly from Amravad Constituency one vacancy was to be filled and in such a case a person cannot subscribe either as a proposer or as a seconder to a large number of nomination-papers than the numbers of the vacant seats to be filled. We, therefore, have no alternative but to come to the conclusion that nomination paper, serial No. 5 was not validly proposed and seconded These defects about the proposal and the seconding go to the rest of the nomination paper and as such this paper was also rightly rejected on this ground apart from other considerations. In fact we might repeat that the learned counsel for the petitioner, at the time of his argument, made it very clear to us that he did not place any reliance on nomination-papers, serial Nos. 5 and 6. His whole case, according to him, rested upon the validity of nomination paper, serial No. 4. We, therefore, straightway proceed to examine nomination paper No. 4 which is the most important paper in the case.

26. As regards the nomination paper, serial No. 4, the contention of the petitioner is that the procedure followed by the Returning Officer in rejecting this paper is contrary to the provisions of the Representation of People Act, in as much as he did not pass a separate order on each of the nomination papers filed by the petitioner, but passed one consolidated order of rejection on a separate sheet of paper dealing with all the papers of the petitioner, in one single order. He argued that since the procedure followed by the Returning Officer was illegal, the rejection of the nomination paper No. 4 of the petitioner should also be held to be illegal and improper. To convince us of this part of his argument, the learned counsel invited our attention to section 36, sub-section (6) of the Act. We might reproduce this sub-section relied upon by the petitioner. It reads as under:

> "The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same, and if the nomination paper is rejected shall record in writing a brief statement of his reasons for such rejection."

27. Analysing this sub-section we find that two things are required to be done by the Returning Officer. The first is that he must endorse his decision accepting or rejecting a nomination paper, on each nomination paper and the second is that in case of rejection he shall also record in writing a brief statement of his reasons for such rejection. The question is whether the Returning Officer has followed this procedure. We are clearly of the opinion that he has done what was required by him to be done. Looking at the nomination-papers, serial Nos. 4, 5 and 6 of the petitioner, we find that he has endorsed, on each of the papers separately, his decision rejecting them. As regards the second requirement of the section he has recorded in writing a brief statement of his reasons although on a

separate paper. From the reasons given by him in his order dated 8th December 1951 (Ex-P-5) we find that he has considered the case of each paper individually. Therefore, in our view he has complied with the second requirement also.

28. It was urged before us by the learned counsel for the petitioner that the second requirement was not complied with in as much as the reasons were not recorded on the nomination-paper itself. We are unable to accede to this argument. On a plain reading of this sub-section we find that this limitation that the endorsement of acceptance or rejection should be made on the nomination-paper itself applies only to the first requirement and has no connection whatsoever with the second requirement, i.e. recording a brief statement of reasons for the rejection. We can easily conceive of a case wherein the statement of the reasons for rejection may not conveniently be accommodated on the nomination paper itself and that is why we think, the Legislature has rightly avoided placing that limitation in regard to the statement of the reasons for rejection which it has placed in regard to the mere endorsement of the decision accepting or rejecting the nomination paper.

29. Assuming for a moment, however, that the procedure followed by the Returning Officer in disposing of the nomination-papers was not strictly legal, we are not prepared to hold that the defective procedure followed by the Returning Officer in rejecting the paper can make the nomination-paper valid which is otherwise invalid. Once the question of rejection of the nomination-paper is before us, the whole question is at large and it will be on the intrinsic merits or demerits that the nomination paper will be dealt with and not on what the Returning Officer did or omitted to do. We, therefore, think that this contention of the learned counsel for the petitioner is destitute of any legal merit. We will, therefore, try to judge whether this paper is otherwise valid or invalid.

30. Now there have been two kinds of grounds of objection to this nomination paper. One relates to the personal disqualifications of the petitioner himself and another pertains to the manner in which he has filled the form. We will consider each of the objections separately.

31. So far as the objection on the score of his being disqualified is concerned, it is based upon his holding an office of profit by virtue of his being admittedly an assessor and allegedly a patel of mouza Sankheda, Tahsil Bareli and also a member of the Central Tractor Organization. As regards his being a member of the Central Tractor Organization and patel of mouza Sankheda at the time of his nomination paper being filed, we have no evidence to hold that he held these positions ascribed to him. The petitioner in his deposition denied his being a member of the Central Tractor Organization and has also stated that he ceased to be a patel by virtue of his resigning from the office of Patel before he filed the nomination-papers. We, therefore, hold that he is not proved to be a member of the Central Tractor Organization and further that he ceased to hold the office of a patel by virtue of his resignation. The respondent No. 1's counsel contended that though his resignation was accepted by the Collector, under rule 11 of the Rules Governing the Appointment, removal etc. of Patels under the Bhopal State Land Revenue Act, 1932, the Collector did not declare his office vacant as envisaged by rule 11 of the Rules *ibid*. Therefore, according to him, the petitioner can not be deemed to have ceased to be a patel. This argument is alarming. We cannot possibly hold that it was the duty of the petitioner to see that, side by side with the acceptance of his resignation, the Collector should also have taken steps to declare his office vacant. It was none of the duties of the petitioner to see to this compliance by the Collector, with the requirement of the Rules and we can not possibly visit sins of omissions if any, of the Collector, upon the petitioner. We must, therefore, hold that once the resignation of the petitioner was accepted, he had nothing to do with the position of a patel thereafter. Therefore it works no disqualification for his contesting the election.

32. The question, however, remains as to whether by virtue of his admittedly being an assessor of the Sessions Court, Bhopal, he was disqualified from filing the nomination-paper. We have carefully considered this aspect of the case and we have arrived at the conclusion that no such disqualification attaches to him. A Bhopal assessor is paid no remuneration either fixed or per day of attendance. There are no rules to recompense him even for the out-of-pocket expenses incurred by him to travel to and from the Sessions Court situate at Bhopal, although he may be coming from the farthest corner of the State vide the deposition of the Sessions Judge, Bhopal (P.W. 3). He has no voice in his selection as an assessor and has little scope for exemption. Volens nolens he must act as an assessor being a citizen of the State for section 319, Criminal Procedure Code provides:

> "All male persons between the ages of twenty and sixty shall except as next hereinafter mentioned, be liable to serve as jurors and assessors at any trial held within the District in which they reside....."

The grounds for exemption are stated in section 320 Criminal Procedure Code. They pertain to holders of certain offices or persons exempted from personal appearance in Court under certain provisions of the Code of Civil Procedure or persons specially exempted by the Provincial Government. It will be clear from the perusal of sections 319 and 320 of the Criminal Procedure Code that it is a liability imposed under the law on a male citizen between particular ages to serve as an assessor whether he wills it or not. So much for his liability. Let us see if he enjoys any powers or privileges. The opinions of an assessor are not binding on the Court. Section 309, sub-section (2), Criminal Procedure Code lays down that:

> "the Judge shall then give judgments, but then in doing so shall not be bound to conform to the opinion of the assessors."

Privileges he has none. He appears in order to aid the Sessions Judge in obedience to a summons issued by the latter and must attend the Court, leaving his own private work apart, irrespective of the date being convenient to him or not else he lays himself upon to an action by the Court for his non-attendance who could fine him to the ture of Rs. 100 under section 332, Criminal Procedure Code. It is in this back ground that we have to consider whether he should be held disqualified.

33. We have not been referred to any direct authority on the point. The provision relevant to the consideration of this matter is contained in Article 102 of the Constitution of India for it is this article that applies to a case of Part C State and not section 7, Chapter III of the Representation of People Act, 1951. Article 102, clause (a) reads as under:

> "A person shall be disqualified for being chosen as and for being a member of either house of Parliament.....
>
> (a) If he holds any office of profit under the Government of India or the Government of any State, other than office declared by Parliament by law not to disqualify its holder;"

In our opinion this provision is wholly otiose on the case of an assessor, considering the plain wording of the article, the historical association and the scheme relating to the choosing of assessors under the Criminal Procedure Code. We think the word "hold" is very important and furnishes some key to the solution. The word "hold" connotes some volition and choice and has no application to the case of an unvoluntary act of a person imposed upon him under the law of the land. The assessor is merely subject to the statutory liability of being asked to do the duty of assisting the Sessions Judge in a Sessions Trial in a particular area of which he is a resident. The Code of Criminal Procedure prescribes many duties to be performed by citizens to help the State in the administration of law and order. For instance under section 42 of the Code every person is bound to assist a Magistrate or a Police Officer reasonably demanding his aid in the taking or preventing the escape of any other person whom such Magistrate or Police Officer is authorized to arrest and so on. Under section 44 of the Code every person shall, in case of certain offences forthwith give information to the nearest Magistrate or Police Officer of commission or intention of such offences. All this would indicate that a person required to do certain duties under the Criminal Procedure Code, does not hold any office, position, power or advantage but is merely liable to render assistance to the State in the matter of law and order. The position of an assessor, who is asked to assist the Sessions Court in the trial of a Session Case, is no different in principle from the one or a person who is asked under section 42, Criminal Procedure Code to give aid to a Police Officer or a Magistrate and if a regular list of assessors is to be made by the Sessions Judge and the Collector under section 321, Criminal Procedure Code, it is not with a view to give a superior status to an assessor but to convenience the Court in dawing upon different persons from time to time and also to avoid constant trouble necessarily involved in attendance as an assessor to the same persons. Any doubts about this would be dispelled from the phraseology used in sections 319 and 320, Criminal Procedure Code. Section 319 indicates the persons liable to serve as assessor and section 320 indicates the cases of exemption. Now a person can only be exempted from some liability or a duty and not from holding an office. If it were case of holding an office, the appropriate work in section 320 of the Code would have been 'disqualifications' and not 'exemption'. In a civilized State all citizens are expected to aid the State and it will be ridiculous to hold that a person should be under a disability merely because he does something which every citizen is bound to do under the law. We can never

conceive of the law being so absurd so to penalize a man for obeying the law. An assessor, by acting as an assessor, merely obeys the command of law. In the circumstances, it would be wrong to say that an assessor holds an office but it would be more correct to say that he is rather held to an office even if we were to apply the term "office", which, as we will show later, is not applicable to the case of an assessor, for a person, who holds, has necessarily the power to cease to hold at his will but a person who is held to a thing has no such volition and that is exactly the position of an assessor. He cannot cease to function as an assessor at his will. We are, therefore, of the view that the word "hold" so essential to the applicability of article 102 (a) of the Constitution, is singularly inapplicable in the case of an assessor.

34. Another thing that weighs with us is that the alleged office of profit must be under Government of India or the Government of any State. From the foregoing discussion of duties of the assessor and the circumstances, under which he is to function, it cannot be suggested that he has even the remotest connection with the Government of India or Government of the State. He is called by the Sessions Judge to assist him and he is under no authority or control of any Government. Therefore it is not possible to hold in his case that he holds any office of profit under the Government of India or the Government of any State. Besides these things in the case of an assessor we are of the view that the question of "office of profit" does not arise. In the case of an assessor there is no office much less an "office of profit." Under Article 102 (a) of the Constitution what is contemplated is employment and nothing short of it. We are fortified in our view by Basu's commentary on the Constitution of India, 2nd Edition, at page 346. The distinguished Commendator, on the quotation from Blackstone, has based his commentary which suggests that "office of profit" must mean "employment" with "fees and emoluments" thereunto belonging". This is the view taken by Mears CJ. and Piggoh J. In *Mohomed Baksh and another* vs. *Muhammad Abdul Baqi Khan and others* (A.I.R., 1924: Allahabad, 133). This decision involves an interpretation of the words "place of profit" used in the U.P. Municipalities Act.

35. Giving the matter our deepest consideration it is not possible to agree that the case of an assessor is hit by the phrase "holds an office of profit", under the Government of India or the Government of any State.

36. Taking up the second objection on the score of the petitioner's not filling the form in the manner required by law, we find his position is less fortunate. Admittedly in the column relating to "appointment of election-agent" he has not specified the name of the election agent but he has merely stated that he appoints himself. In this connection we have to see whether he has correctly filled this particular clause and if not, what is the effect thereof. The requirements for a valid nomination-paper are laid down in section 33, sub-section (1) of the Representation of People Act. Besides many other things it is also laid down therein that a nomination paper must be completed in the prescribed form. The form prescribed in pursuance of this provision is found in Schedule II attached to the Representation of the People Rules, 1951. This prescribed form, in regard to the appointment of election agent prescribes as under:—

"Appointment of Election Agent*

I hereby declare that I have appointed..... son of ..... to be my election agent" myself as my

In reference to the asterisk it is provided that:

> "Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper."

Therefore, the point that arises is whether the petitioner has filled his nomination paper as required by section 33, sub-section (1) of the Act, read with rule 4, schedule II, of the Representation of the People Rules, 1951. It is patent that the petitioner has not filled the form as provided by law. His case is covered by the note in asterisk which unequivocally lays down that in case of more than one nomination paper, the name of the election agent, whether such agent is the candidate himself or some other person, shall be specified in each nomination paper. It cannot be seriously contended that this note does not apply to the case of the petitioner.

37. It was argued before us by the learned counsel for the petitioner that so far as the nomination paper, serial No. 4 of the petitioner was concerned, it does not come within the mischief of this note, as according to him, the Returning Officer has not to bear in mind the fact of other nomination papers having been filed by the petitioner when he considered his case in regard to nomination paper No. 4. We think this argument is fallacious. There appears to be some confusion of thought in the mind of the learned counsel between the acts of the candidate and those of the Returning Officer. This note does not concern the act of the Returning Officer but concerns merely the act of the candidate. It requires that if more than one nomination paper is delivered by or on behalf of a candidate, then the name of the election agent shall be specified. Delivery of more than one nomination paper, by himself or through somebody else, is an act of the candidate. Therefore while filling the form of nomination paper a candidate must know and bear in mind that more than one nomination paper is being delivered and knowing this fact he cannot avoid acting in accordance with the requirements of this note and must fill the form as required thereunder. The note makes no exception in the case of any of such papers, be it the first or the last. This is so far as the candidate is concerned. What the Returning Officer has to do is to be gathered from the following.

38. Scrutiny by the Returning Officer is provided in section 36 of the Representation of People Act and it takes place on a day different than the one on which the nomination papers are filed. On the day of scrutiny the Returning Officer, as provided by section 36, sub-section (2) of the Act *ibid*, has to give all reasonable facilities to the candidates, their election agents, one proposer and one seconder of each candidate and one other person duly authorised in writing by such candidate for examining the nomination papers of all candidates which have been delivered under section 33 of the Representation of People Act and the Returning Officer has then to examine the nomination papers and decide all objections which may be made to any nomination. These provisions make it clear beyond doubt that it is no secret from the Returning Officer or from the rival candidates that a particular candidate has filed a particular number of nomination papers. In fact that is the common knowledge of all and it is on the basis of that common knowledge that objections are taken by the rival candidates or by the Returning Officer himself. In view of this the rival candidates or the Returning Officer are bound to know and keep in view the fact of delivery of more than one nomination-paper if any, by any particular candidate and the Returning Officer as well as the rival candidates knowing this fact, are entitled to insist upon the compliance of the directions made in the note referred to above. In other words in this particular case, on the date of scrutiny the Returning Officer knew and should have known that the petitioner has delivered more than one nomination paper and as such he was entitled to judge every paper in the light of this knowledge. There is nothing in the Act or the Rules commanding the blindness of the Returning Officer to the fact of delivery of more than one nomination paper in the case of any candidate, at the time he is examining any particular paper of the candidate. If the contention of the petitioner were correct, the note under discussion would be a dead letter and could never be given effect to.

39. The defect, as discussed above, being apparent on the face of the nomination paper, serial No. 4, the question that really arises is whether this defect is such as goes to the root of the nomination paper or should be deemed as a technical defect, within the meaning of section 36, sub-clause (4) of the Act. It was this aspect of the question that gave rise to a lively debate before us. In fact all the efforts of the learned counsel for the petitioner were directed to make us treat this defect, which was obvious, as a technical one and hold the paper valid despite this defect. We cannot agree to the suggestion. We treat this defect as a defect of substance and not of mere form. We regard this act on the part of the petitioner as a deliberate disregard of specific mandatory injunction contained in the note that the name of the election agent whether it was the candidate himself or somebody else, must be specified. The learned counsel for the petitioner urged that the word "myself" followed by the signature of the candidate at the end sufficiently specified the name of the election agent. We do not think so. The word "myself" in the column of "appointment of election-agent" would always be followed by the signature of the candidate at the end. If these two things constituted sufficient specification of the name within the meaning of the note, then we do not think, the Legislature should have made a departure in the case of delivery of more than one nomination paper and insisted upon the specification of the name of the election agent instead of "myself" which was not only permissible, but actually prescribed in the case of delivery of one nomination paper. Obviously the Legislature thought that there was a difference between the two positions. What the difference is, is not for us to answer and we will attempt no such answer. It is not what the petitioner thinks or as a matter for that what we think is material, but what the law thinks is material.

40. From the way we have discussed above, it is clear that the law has maintained a difference between the expression "myself" and actual name of the candidate and it must be given effect to. The language is so clear that we cannot possibly indulge in the supposed intention of the Legislature. In this connection we cannot forget the duties enjoined upon us by the law as a Court. The function of the Court is merely to interpret the language of a statute. It is not the province of a Court to scan its wisdom or policy. Its duty is not to make the law reasonable but to expound it as it stands. We, as a Court, are naturally not concerned with the desirability, utility or reasonableness of a particular provision of law if the language is plain. We are to give effect to it as we find it irrespective of the consequences it may entail. Assuming that the difference, maintained by the prescribed form between "myself" and the actual specification of the name, is unreasonable, we cannot choose to change the plain language used in the note with a view to avoid the hardship that might accrue to the petitioner for that will be changing the law. It is well settled, as observed by *Das Gupta and Guha JJ. in Sadananda Pyne vs. Harinam Sha* (A.I.R., 1950: Calcutta, 179), that

> "Courts must resist the temptation to change the law, under cover of interpretation of law. If they use their power to interpret law, to alter laws which they may not like, and to make new laws which they think should be made, that would be a corrupt use of their power."

and we for our part will avoid the sin so ably condemned in the above observation.

41. In this case we cannot help keeping beofre us the well known maxim—*"Expressio unius est exclusio alterius."* The express mention of one thing implies the exclusion of another and the rule embodied in this maxim is clearly applicable to the present case. Express insistence on the specification of the name of the election agent, whether he be the candidate himself or somebody else, implies the exclusion of the equivalent expression "myself" which is prescribed in the case of one nomination paper. If the expression "myself" is excluded then it clearly means that the appointment of the election agent has not been made at all and that is a serious thing, knowing as we do, the importance attached to the appointment of election agent in the elections. Grave responsibilities are attached to the office of an election agent. The position of an election agent is that he is made effectively responsible for all the acts done in procuring the election. He has to hire polling clerks and every body else. All money to be paid passes through his hands and he is the person who makes all arrangements. The law requires that he should explain his conduct in the management of the election when the time comes. See Barrow-in-furness 4 O'M and H. 82 as quoted by H. S. Doabia at page 90 of his Book, the Law of Elections and Election Petitions. From this it will be clear that any lapse with regard to this cannot be viewed with equanimity and the petitioner having made deliberate lapse and by disregarding the warning contained in the note, cannot now plead that it is of a trivial nature and should be condoned under section 36, sub-clause (4) of the Representation of People Act.

42. That the provision with regard to the appointment of an election agent is regarded with some strictness would further be clear from this that while under section 33, sub-section (5) the Returning Officer has been given a power to permit some error in the nomination paper in regard to the names or Electoral Roll numbers of the candidate, proposer and seconder to be corrected, no such power has been vested in him to condone an error by a candidate with regard to the appointment of an election agent.

43. The petitioner's learned counsel, to get round the difficulty in his path, suggested that the schedule should not be permitted to override the Act. His contention was that the provision, that the name of the election agent should be specifically stated in the nomination paper in case of delivery of more than one paper, is not mentioned in the Act itself, but is mentioned only in the schedule. Absence of this provision in the Act itself, it was argued, was an indication that it was not mandatory for the petitioner to specify the name of the election agent. We confess ourselves wholly unable to follow this argument. The provision that the nomination paper should be completed in the prescribed form is contained in the Act itself *i.e.* section 33, sub-section (1) of the Representation of People Act. Therefore it naturally follows that what is prescribed in accordance with this provision would be as much part of the Act as section 33 of the Act itself. The form has been prescribed in pursuance of the authority delegated under the Act and what is done in the exercise of the authority so delegated, would be equally binding and cannot be disregarded unless it is shown that the form prescribed is in excess of the authority. It has not been shown to us that the authority, which prescribed this form, went beyond the limits of the delegated powers.

44. We have been referred, by the learned counsel for the petitioner, to the interpretation of Indian Statutes by Jagdish Swarup, at page 170. Note 8 concerns the schedule forms. It states that:

> "The meaning of the Act should not be derived from the forms which have been prescribed by the rules framed under the Act. Schedules forms may be dangerous guides to the meaning of statute."

We have no quarrel with this principle. We have not attempted to derive the meaning of the Act from the form which has been prescribed by the Rules framed under the Act. We agree that the plain meaning of the Act cannot be controlled by the wording of the schedules but then it is something different to say that if an Act permits certain forms to be prescribed and wants some acts to be done in confirmity with those forms, insistence should not be made on the strict compliance with the terms of the forms so prescribed. The Act will override the wording of the forms, but only when there is anything inconsistent between the Act and the forms prescribed.

45. Going back to the disregard of the form by the petitioner again we might reiterate that it is not merely an omission but it is a positive want of compliance with the requirement when a clear warning has been issued in the form of the note. If anybody disregards a clear warning he disregards it at his own peril.

46. Some election cases were cited before us. On the petitioner's side, Election Case of *Wdsawa Singh* vs. *Waryam Singh and Others*, at page 122 of the Indian Election Cases by Sen and Poddar was quoted as an authority for the proposition that omission to describe sub-division of the electoral roll, in which the name of a candidate is entered, is not fatal to the nomination. This case is clearly distinguishable. The answer to this case is simple. There is a definite provision made in section 33, sub-section (5) of the Representation of People Act, which reads as under:—

> "On the presentation of the nomination paper the Returning Officer shall satisfy himself that the names and the electoral roll numbers of the candidate and his proposer and seconder, as entered in the nomination paper, are the same as those entered in the Electoral Rolls:
>
> Provided that the Returning Officer may permit, any clerical error in the nomination paper in regard to the said names or numbers, to be corrected in order to bring them into confirmity with the corresponding entries in the Electoral Rolls and
>
> (b) where necessary direct that any clerical or printing error in the said entries will be overlooked."

We have already distinguished a case of an election agent from the case pertaining to the candidate and his proposer and seconder. The authority cited before us would clearly fall within the four corners of section 33, sub-section (5) of the Act. Therefore in such a case it was correctly held that the defect in the nomination paper was not fatal.

47. Another authority that has been placed before us is *S. Basant Singh* vs. *S. Rattan Singh* reported at page 313 of the Indian Election cases by Sen and Poddar. In this case nomination paper was rejected on account of the omission to give particulars of the election agent named in the declaration of his appointment. This again is not applicable to the facts of the present case. Under the prescribed forms it was not required that the particulars about the election agent be stated. Only the name was required to be stated. Under the circumstances, in such a case it was wrong to reject the nomination paper. But here in this case the paper has been rejected not for the omission to give particulars but for the omission to give the name itself.

48. Two more authorities have been relied upon and they are (1) *Seth Mathuradas Bulkidas Mohota* vs. *Rao Bahadur D. Laxmi Narayan* (Case No. 62) and (2) *Abdul Qadir Siddiqi* vs. *Syed Abdul Hasan Natique* (Case No. 63) reported in Doabia's Election Cases, Volume No. 1, at pages 314 and 324, respectively. The principle laid down in both the cases is the same. In both the cases one declaration in regard to appointment of the election agent accompanied many nomination papers and in both the cases the nomination papers were rejected in as much as it was held that the provision, that each nomination paper should be accompanied by a declaration of appointment of an election agent, was contravened and then it was held that one bad nomination paper cannot avoid another good one. This was held on the principle that since there was one declaration of appointment of election agent at least one of the many nomination papers was valid.

We are afraid these cases have no relevancy so far as the present case is concerned. In the case on hand one good nomination paper has not been avoided by other bad nomination papers. The case of each nomination paper in this case has been judged separately on its intrinsic merits and demerits The trouble in this case is that each one of the nomination papers suffers from the same infirmity. We, therefore, have no alternative but to hold that none of the nomination papers filed by the petitioner was valid and that there was non-compliance with the express requirement of the prescribed form which is fatal to the validity of the nomination-papers. Finding accordingly.

49. *Issue No.* 9.—This issue does not require any very great discussion, as we have already shown in our narration of facts that the petitioner was not at all serious about this issue. Defects Nos. 2 and 6 were admitted to have been raised due to mistake and the rest were characterized to be trivial by the petitioner's learned counsel himself. In view of this we answer this issue in the negative and hold that the nomination paper of respondent No. 1 was not liable to be rejected on any of the grounds enumerated in para. 9 of the petition.

50. *Issue No.* 10.—This issue does not arise in view of the finding on issue No. 9.

51. *Issue No.* 11.—This issue again was not pressed. The petitioner's learned counsel himself frankly conceded that even if it were held that the nomination papers of respondent No. 2 should have been rejected for defects shown in para. 13 of the petition, it would serve no purpose of the petitioner for wrongful acceptance of his nomination papers, far from prejudicing the case of the petitioner, resulted in an obstacle in the path of the respondent No. 1. If respondent No. 2's papers had been rejected, the respondent No. 1 would have got a clear field and would have been returned uncontested In view of this we hold that this issue does not arise.

52. *Issue No.* 13.—In view of our findings under issues 3 to 8 and 12, the finding on this issue can only be in the negative. The nomination papers of the petitioner were rightly rejected.

53. *Issue No.* 14.—Since we have held that the papers of the petitioner were rightly rejected, the question of the result of the election being materially affected does not arise We, therefore, hold accordingly.

54. *Issue No.* 15.—The petitioner is not entitled to the declaration that the election is wholly void. In fact since he has failed on the issue relating to the validity of the nomination papers, his whole case fails. Wrongful rejection of his nomination papers was the sheet-anchor of his case. If that dragged the whole thing failed.

55. *Issue Nos.* 16(*a*) *and* (*b*).—We do not think the defect of claiming the reliefs was fatal to the petition. In any case the defect had been cured by the amendment allowed by our order, dated the 14th October 1952. It was argued by the learned counsel for the respondent No. 1 before us that the petition would be time-barred in as much as the amendment was allowed after time for filing the petition had run. This is ignoring the elementary principle of law that when a petition or a document is amended, the amendment takes effect from and relates back to the date of the original presentation. In this view, no question of limitation arises. We, therefore, answer this issue in the negative.

56. *Issue No.* 17.—The learned counsel for the respondent No. 1, at whose instance this issue was framed, at a later stage, abandoned this issue and as such we decide it against the respondent No. 1.

57. The result of the findings on all these issues is that the petition fails and is ordered to be dismissed. The petitioner shall bear his own costs and shall also pay the costs of the respondent No. 1 including Pleaders' fees which we assess at Rs. 300, if certified in time. The respondents 2 to 4 shall bear their own costs, if any.

SCHEDULE OF COSTS

		Petitioner	*Respondent No. 1*	*Respondents Nos. 2 to 4*
1.	Applications	5 0 0	3 8 0	Nil.
2.	Powers	1 0 0	1 0 0	..
3.	Exhibits	10 0 0	0 0 0	..
4.	Process-Fee	2 1 0	0 0 0	..
5.	Subsistence Allowance	10 0 0	0 0 0	..
6.	Pleaders' Fee. (Cert. filed)	300 0 0	(C. filed) 300 0 0	..
	TOTAL	328 1 0	304 8 0	Nil.

The 3rd January, 1953.

Members.

(Sd.) W. Y. RADKE,

(Sd.) N. V. SATHAYE,

(Sd.) M. C. NIHALANI,

Chairman.

[No. 19/133/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

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